

REMARKS

Claims 1-20 are presently pending in the case.

Reconsideration of the present case in view of the remarks herein is requested.

Claim rejections under 35 USC 112

The Examiner rejected claims 4 and 14 under 35 USC 112, second paragraph (sic), as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The rejection is traversed.

The Examiner states that claim 4, for example, does not further limit the parent claim. First, further limitation is not a requirement of the second paragraph of 35 USC 112. Nonetheless, the Examiner is not correct. Claim 4 positively recites "the receptacle". Claim 1 from which claim 4 depends only functionally refers to the receptacle. The receptacle is not a positively set forth structural element of claim 1. Claim 14 is similarly not indefinite.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 1-3, 5, 7, 8, 10-13, 15, 17, 18 and 20 under 35 USC 103(a) as being unpatentable over U.S. Patent 6,705,313 to Niccolai (hereinafter Niccolai). The rejection is traversed.

Niccolai does not render claim 1, for example, unpatentable. Claim 1 is to an aerosolization apparatus comprising, inter alia, a body defining an aerosolization chamber wherein the aerosolization chamber is adapted to receive an elongated receptacle and wherein the elongated receptacle rotates end-over-end. Niccolai does not disclose a capsule that rotates end-over-end. Instead, the capsule in Niccolai oscillates and rotates about its axis (see column 3 lines 10-40 and Figure 2). Since Niccolai does not disclose this positively recited feature, Niccolai does not render claim 1 unpatentable.

Independent claim 10 also recites the "end-over-end" rotation and is also not rendered unpatentable by Niccolai.

Claims 2-9 and 11-20 depend from claims 1 or 10 and are not rendered unpatentable by Niccolai for at least the same reason as the claim from which they depend.

The Examiner rejected claims 6, 9, 16, and 19 under 35 USC 103(a) as being unpatentable over Niccolai in view of U.S. Patent 5,614,217 to Chiprich et al (hereinafter Chiprich et al). The rejection is traversed.

Claims 6, 9, 16, and 19 depend from either claim 1 or claim 10 and include all of the limitations of the claim from which they depend. Chiprich et al does not make up for the deficiencies of Niccolai in rendering claims 1 or 10 unpatentable. Accordingly, claims 6, 9, 16, and 19 are also not rendered unpatentable by Niccolai and Chiprich et al.

Information Disclosure Statement

Applicant is filing under separate cover an information disclosure statement in compliance with MPEP section 609. Indication of consideration of the references provided is requested.

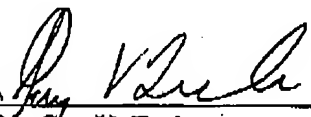
Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

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